

Seattle City Light

SZL-06
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LOG-IN STAMP	
Log No	624
Date	4-11-90
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Due Date	4-23-90



DATE: April 11, 1990

RECEIVED

TO: F. Butler, G. Garman, J. Fletcher, K. Skinnerland,
W. Patton

APR 11 1990

FROM: Gary L. Farr

Environmental Affairs Division

SUBJECT: Review P.M. #230404-2-409
Boeing Lease Proposal - Duwamish Substation

Boeing has requested a 50-year lease with two 25-year options on a portion of our Duwamish Substation property for their new aerodynamics laboratory.

We need to know:

1. Can we live with a 50-year lease?
2. How much of our land is available?
3. Where would a combustion turbine be located and how much land does it need?
4. Are their terms acceptable?

Paragraphs in the proposal needing special review are:

- 3.1(b) - which requires rent credits for power use over a base amount.
- 8.2(h) - which requires us to warrant an adequate electrical supply.
- 8.3(a) - environmental matters.
- 10 - environmental matter.
- 14 & 15.1 - hold harmless, etc.

Please review the lease, make any necessary changes, indicate areas available or not available on the attached map and return with your comments by April 23, 1990. If you have any questions, please contact Steve Hagen at 4-3327.

SEH:rah

Attachments

SCL 04511

GROUND LEASE
BETWEEN
CITY OF SEATTLE
LESSOR
AND
THE BOEING COMPANY
LESSEE

DATED _____, 1990

RECEIVED
MAR 23 1990
PROPERTY MANAGEMENT

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GROUND LEASE

THIS LEASE is effective as of the _____ day of _____, 19____, between THE CITY OF SEATTLE, a municipal corporation, referred to in this lease as the "Lessor," and The Boeing Company, a Delaware corporation, referred to in this Lease as the "Lessee."

W I T N E S S E T H:

1. Premises. Lessor hereby leases to the Lessee, and the Lessee hereby leases from Lessor, the real property situated in King County, State of Washington, described as follows:

TOGETHER WITH the appurtenances now or hereafter thereon, hereinafter called the "Leased Land," subject, however, to the exceptions permitted pursuant to paragraph 6 of this Lease, to those authorized after the date hereof pursuant to the terms of this Lease, and to ordinances and regulations now or hereafter lawfully imposed by any government or agency thereof. A drawing of the approximate boundaries of the Leased Land is attached as Exhibit _____. If the survey described in paragraph 6 indicates that the legal description given above fails to include the land pictured on Exhibit _____, the legal description shall be appropriately amended so as to include such land.

2. Term. The term of this Lease shall commence on _____ and shall continue for 50 years thereafter, ending on the last day of _____ subject to extension in paragraph 5.

3. Rental.

3.1 Monthly Rental Payments.

(a) Basic Calculation. The Lessee shall pay Lessor as rental for the Leased Land during the period beginning with _____ and through the remainder of the 50 year term, subject to the rental adjustments hereinafter described, a monthly rental of _____. All of said monthly rentals shall be paid in lawful money of the United States of America in advance on or before the first day of each and every calendar month of the Lease term.

(b) Credit for Power Usage. It is understood that Lessee's planned development for the Leased Land is likely to use substantial amounts of electricity. Lessor and Lessee shall together develop a baseline for usage of electrical power at the Leased Land which shall be equal to the average amount of electricity used by Seattle City Light's industrial customers at locations of comparable size to Lessee's planned development. Lessee shall receive a credit against rental payments equal to one-half of the amount by which Lessee's electric utility charges attributable to the development at the Leased Land exceeds the baseline for usage of electrical power. Such credit shall not reduce the rental payment for any month below zero, but any credit unused during any month may be carried forward for use over any of the next twelve months.

3.2 Late Payment Charges. If Lessee is more than fifteen (15) days late in making any rental payment provided for herein, a late payment charge shall be due in addition to the monthly payment. The late payment charge shall be in the amount of five percent (5%) of that monthly payment. If Lessee is more than thirty (30) days late in making any rental payment provided for herein, an additional five percent (5%) late payment charge shall be due; and if Lessee is more than forty-five (45) days late in making any rental payment provided for herein, a third five percent (5%) late payment charge shall be due. In addition, if any monthly payment is more than thirty (30) days late, it shall accrue interest beginning as of the thirtieth (30th) day after the due date at three (3) percentage points above the most favorable then prevailing interest rate which Seattle First National Bank charges its commercial borrowers for short-term loans, but not in excess of the maximum legal rate per annum, from the thirtieth (30th) day after the due date to the date of Lessee's payment. The foregoing late payment and interest charges are in addition to any other penalties provided herein for late payment.

4. Rental Escalation. The rent shall be fixed for the first five (5) years of the term of the Lease, as set forth above. At the end of the first five (5) years of the Lease term, and every five (5) years thereafter during the term of the Lease, including the extended term, if any ("Rental Change Dates"), the rent shall be adjusted to reflect the then fair market rental value of the Leased Land. The fair market rental value shall be based upon the land "as is" (that is, in its condition at the time of the commencement of the lease) and shall not take into consideration any improvements paid for by the Lessee such as buildings, new sewer connections, added fill, if any, asphalt, landscaping, or other such improvements made to the Leased Land, or off-site improvements paid for by the Lessee.

The parties shall have between the sixtieth (60th) and the thirtieth (30th) day prior to a Rental Change Date in which to

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arrive at a mutually agreeable rental amount. If the parties cannot agree upon the rental for the upcoming five year period, the rent in effect for the then current five year period shall continue unless the party objecting to the continuation of the then current rental, the "Originating Party," shall appoint an M.A.I. appraiser. The appraiser shall then determine the fair market rental value of the Leased Land, excluding the value of any improvements constructed by Lessee, as of the Rental Change Date. After the determination, the Other Party may either accept it, or if it disagrees with the amount, it shall, within thirty (30) days after having received a copy of the appraisal, appoint a second appraiser. The second appraiser shall review the first appraisal, and if he agrees with it, the appraisal shall be binding. If he disagrees with the amount of the appraisal, and if the two appraisals are within five percent (5%) of each other, then the two appraisals shall be averaged to determine the fair market rental value. If he disagrees with the amount of the appraisal, and if the two appraisals are not within five percent (5%) of each other, then the two appraisers shall within ten days appoint a third appraiser. If the two appraisers cannot agree upon a third appraiser, or if either party fails to appoint an appraiser at the times set forth herein, then either party to the Lease may, after written notice to the other party, apply to the Presiding Judge of King County Superior Court for the appointment of an appraiser. The three appraisers shall then determine the fair market rental value of the Leased Land, as of the Rental Change Date. The decision of two of the three appraisers shall be binding. All appraisers shall be M.A.I. appraisers engaged full time in the business of appraising real estate in the State of Washington. Each appraiser shall have thirty (30) days after such appraiser's appointment to arrive at a fair market rental value. The Originating Party shall pay all costs of appraisal.

5. Option to Renew. Lessor grants to Lessee an option to renew the term of this Lease for two additional consecutive terms of twenty-five (25) years, the first to commence on _____, and end on the last day of _____, and the second to commence on _____, and end on the last day of _____ (provided that the option to renew the lease for the second additional term is contingent upon Lessee having renewed this Lease for the first additional term). Each such additional term is to be on the same terms and conditions as are contained herein, with the rental payments under said additional term to be adjusted in accordance with paragraph 4 hereof. Lessee shall be deemed to have automatically exercised its option to renew unless Lessee gives Lessor written notice of its decision not to renew at least twelve (12) months before the end of the initial term of this Lease (and, if applicable, before the end of the first additional term of this Lease). Notwithstanding the foregoing, the option to renew granted by this paragraph 5 shall have no force or effect whatsoever, and

this Lease shall terminate on the last day of the initial term of this Lease if Lessee is in material default twelve (12) months before the end of the initial term of this Lease. If Lessor has given Lessee a notice of default and if the matter that is the subject of the notice of default is of such a nature that it cannot be reasonably corrected by twelve (12) months before the end of the initial term of this Lease, no default shall be deemed to exist as of twelve (12) months before the end of the initial term if Lessee promptly, upon receipt of notice, commences the curing of the default and diligently prosecutes the same to completion.

6. Title Insurance; Survey. Prior to the commencement of the initial term of this Lease, Lessor shall provide to Lessee an ALTA Leasehold Owner's Extended Coverage policy of title insurance, subject to no exceptions other than easements for public utilities and building restrictions which are (a) common to the district in which the Leased Land is located and (b) consistent with Lessee's planned development of the Leased Land. In addition, Lessor shall provide Lessee with an ALTA survey of the Leased Land prepared by licensed surveyors satisfactory to Lessee. Such survey shall be prepared in a manner consistent with the minimum standards established by ALTA and ACSM. Lessor shall be responsible to pay the fees of such surveyors and the premium (and sales tax thereon) for the policy of title insurance, but only to the extent that it does not exceed the premium for a standard form policy. Lessee shall be responsible to pay the premium for such policy (and the sales tax thereon) to the extent it exceeds a standard form policy.

7. Taxes, Utilities and Other Charges.

7.1 Payment of Taxes, Utilities and Other Charges. The Lessee hereby covenants and agrees to pay, before delinquency all taxes, general and special, assessments, including assessments for local improvements, all charges for electricity, telephone, heat, gas, water, sewer, surface waters and garbage removal, and all other public service or utility charges of every kind and type, inspection fees, and every other charge of every and any kind, whether herein enumerated or otherwise, that may be levied, assessed, charged, or imposed upon or against the Leased Land or any improvements thereon during the term of this Lease. The parties acknowledge there are no real estate taxes assessed against the premises but there is a leasehold tax. The leasehold tax for the first and last years of the term of this Lease shall be prorated between the Lessor and Lessee as of the dates of commencement and termination of this Lease. In the case of assessments for local improvements or betterments that are assessed or imposed during the term of this Lease and that may be payable in installments, the assessments may be paid over the longest period of time that is permitted by the assessing agency, and Lessee shall only be

obligated to pay the installments that fall due during the term of this Lease as extended. This shall be an absolutely net Lease, and shall at all times yield to the Lessor the net rental provided for in this Lease, except for any income taxes that may be payable by the Lessor to the United States of America or to any state or local government under any existing or future law. It shall be the Lessee's sole responsibility to ascertain the amounts due and the due dates of all said taxes, assessments and charges, and the Lessor shall in no event be liable for failing to ascertain or notify the Lessee of the amounts or the due dates of any of said taxes, assessments and charges. Upon Lessor's request, Lessee shall deliver to the Lessor, within thirty (30) days of Lessor's request, receipts showing payment of all said taxes, assessments and charges.

7.2 Right to Contest Taxes, Assessments and Charges. The Lessee shall have the right to contest all taxes, assessments and other governmental charges which it herein agrees to pay and any and all laws, rules, orders, ordinances and regulations which it has anywhere herein agreed to comply with, and shall have the right to defer payment or compliance pending the determination of such contest. The Lessee hereby covenants and agrees to indemnify the Lessor against any liability, loss, damage, cost or expense resulting from the deferment of payment, noncompliance with or contest of any such tax, assessment, or governmental charge so contested or the noncompliance with or contest concerning any such law, rule, order, ordinance or regulation so contested. Upon demand of the Lessor, the Lessee agrees to furnish the Lessor an indemnity bond from a company authorized to issue such bonds in the State of Washington, indemnifying the Lessor against such liability, loss, damage, cost or expense.

8. Use of Premises.

8.1 Compliance with Laws. The Lessee shall comply with all laws, rules, orders, ordinances and regulations of any governmental agency having jurisdiction of the Leased Land affecting said Leased Land or the use thereof. Lessee shall not do or permit anything to be done in or about the Leased Land, nor keep or bring anything therein, which will cause a cancellation of any insurance policy covering said Leased Land or any part thereof. Except as contained in paragraph 8.2, Lessor has made no representations that the condition of the Leased Land on the date of the commencement of the term hereof complies with the requirements of any federal, state, county or other governmental entity or that any governmental permits have been obtained or are in good standing with reference to the ownership or use of the Leased Land. The Lessee agrees to satisfy all such lawful governmental rules, orders, ordinances, and regulations and to obtain any such permits, all at its sole cost and expense. Notwithstanding any other provision in this

Lease to the contrary, if during the term of this Lease (as it may be extended) any unsafe condition or hazardous waste or contaminant is discovered on the Leased Land (including in or under the soils or in the groundwater below the Leased Land), other than a condition created by or a hazardous waste or contaminant released by Lessee, Lessor shall at its own expense remove or remediate such unsafe condition and clean up or remediate such hazardous waste or contaminant and hold Lessee harmless from any losses, including claims of third parties, resulting from such condition or such hazardous waste or contaminant.

Lessee agrees to fully comply with all applicable requirements of City of Seattle Ordinance 101432, particularly with respect to Section 3.2 of said ordinance as it relates to Lessee's occupation of the Leased Land. Lessee also agrees to follow and comply with the instructions for the implementation of Ordinance 101432 as set forth in the "Instructions for Lease Compliance, Ordinance 101432" as it relates to Lessee's occupation of the Leased Land. Said Section 3.2, now Seattle Code Section 20.44.04, is attached hereto as Exhibit A and by this reference is made a part hereof.

8.2. Lessor's Warranties. Lessor hereby warrants and represents to Lessee that:

(a) Authority. Lessor has full power and authority to execute and deliver this Lease. This Lease is valid, binding and enforceable against Lessor in accordance with its terms. The execution of this Lease will not result in a breach of the terms and conditions of nor constitute a default under or violation of any agreement or other instrument or obligation to which Lessor is now a party or by which Lessor or any assets of Lessor may be bound or affected, where such a breach or default would prevent the consummation of this transaction. However, notwithstanding any other provisions of this Lease, if there are any platting requirements imposed because of the execution of this Lease, all such requirements shall be satisfied by Lessee at its sole expense.

(b) Title. Lessor has good and marketable title to the Leased Land subject only to those encumbrances and easements of record as of the date hereof.

(c) Monetary Liens. Lessor warrants that there are no monetary liens against the Leased Land as of the date hereof.

(d) Encumbrances. Lessor warrants that there are no encumbrances which would make the Leased Land unsuitable for development as contemplated herein, or any assessments which have been levied against the Leased Land, becoming due during the term of this Lease.

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(e) Litigation. Lessor warrants that there is no litigation, investigation or other proceedings pending or, to the best of its knowledge, threatened against or relating to the Leased Land.

(f) Hazardous Wastes. Lessor warrants that it is not aware of any hidden or subsurface hazardous substances, as defined in paragraph 8.3 below, on the Leased Land.

(g) Quiet Enjoyment. Lessor warrants that during the term of the lease, so long as Lessee is not in default of the terms of this Lease, Lessee shall be entitled to the quiet enjoyment of the Leased Land.

(h) Supply of Electric Power. Lessor warrants that during the term of this Lease (including extended terms), Lessor will supply adequate electric power to the Leased Land, at Lessor's normal commercial rates for the usage required by Lessee, or at such rates as may be negotiated between Lessee and Lessor, to enable Lessee to carry on wind tunnel testing and all other activities in connection with Lessee's business as conducted on the Leased Land. In this connection, Lessor and Lessee shall confer from time to time as necessary in order for Lessor to anticipate Lessee's electrical power requirements.

8.3 Pollutants and Hazardous Substances.

(a) Lessee's Right to Inspect. Prior to the commencement of the lease term, Lessee shall have the right to enter the Leased Land from time to time as may be necessary to inspect the Leased Land at all times prior to the commencement of the lease term as Lessee deems necessary. Commencing on the date Lessor executes and delivers this Agreement, Lessee shall have the right to take soil and water samples (including groundwater samples) from the Leased Land, and to test and analyze such samples as Lessee deems necessary or desirable to determine the extent of any contamination of the soils and water (including groundwater) on the Leased Land and surrounding or neighboring areas to which Lessor has access. If, based on the results of such inspections and/or such tests, Lessee determines that the condition of the Leased Land is unsatisfactory or if Lessee believes that its lease of the Leased Land would expose Lessee to undue risks of government intervention or third-party liability, Lessee may request that Lessor undertake all necessary cleanup and/or remediation of such conditions and Lessor shall use its best efforts to co-operate in and to complete such cleanup and/or remediation. If the parties are unable to come to a mutually satisfactory agreement regarding Lessor's actions with respect to such contamination, Lessee may, without liability, cancel the lease of the Leased Land. In order to facilitate Lessee's inspection of the Leased Land,

Lessor shall (a) provide to Lessee all relevant data, documents, reports, surveys, and records related to the Leased Land which are in Lessor's possession and requested by Lessee and (b) complete the Owner's Certification of Real Property Conditions set out in Exhibit ____ and deliver it to Lessee within 10 days following Lessor's execution of this Agreement. Lessee shall provide to Lessor copies of all reports received by Lessee in connection with such inspections. Lessee shall repair any damage done to the Leased Land in connection with such inspections and shall hold Seller harmless against any claim or lien of any person providing materials or labor to Lessee in connection with such inspections.

(b) Lessee's Use of the Premises. No substances shall be unlawfully discharged into the Duwamish River. None of the following substances shall be allowed on the Leased Land without strictly complying with all laws and regulations affecting the storage or use thereof:

(1) Hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq., and its implementing regulations, and all future amendments thereto:

(2) Regulated substances, as defined in § 9001 of the Solid Waste Disposal Act as amended by § 601 of the Hazardous and Solid Waste Amendments of 1984, and all future amendments thereto; and

(3) Dangerous wastes or extremely hazardous wastes as defined in the Hazardous Waste Disposal Act, Chapter 70.105 RCW and its implementing regulations, and all future amendments thereto.

If Lessor at any time should have reasonable cause to believe that any of the foregoing substances are or at any time during the term hereof have been on the Leased Land without strict compliance with all laws affecting the storage or use thereof, Lessor may have the substances tested, and in the event of such non-compliance, Lessee shall pay all costs of testing and compliance, including, without being limited to, reasonable fees and expenses of attorneys, consultants and testing agencies, and all other costs of cleanup of the Leased Land. If Lessee at any time receives a report or letter from the State of Washington Department of Ecology or the U.S. Environmental Protection Agency concerning the condition of the Leased Land, it shall forthwith provide Lessor with a copy thereof.

9. Improvements. Subject to compliance with applicable laws and regulations relating to development of real property, the Lessee may at any time use and develop the Leased Land for construction of a wind tunnel facility and for other activities

related to the operations of Lessee. All work performed by Lessee shall be performed in accordance with all applicable regulations and requirements of any governmental authority having jurisdiction thereof. All such improvements as made may be modified, removed or relocated by the Lessee at any time. At the expiration or earlier termination of this Lease, all such improvements on the Leased Land which have not been removed or relocated shall become the property of the Lessor and shall remain in and be surrendered with the Leased Land as a part thereof without payment therefor. If Lessee's plans for development of a wind tunnel facility or such other plans for development of the Leased Land as Lessee may submit for approval by the relevant governmental authority shall be disapproved or shall be approved with such restrictions or modifications as Lessee, in its sole discretion, deems unacceptable, Lessee may terminate the lease of the Leased Land. Upon such termination, Lessee's sole obligation shall be to pay rent prorated to the date of termination and to return the Leased Land to Lessor in the condition required by the terms of this Lease.

10. Acceptance and Care of Premises. Lessee acknowledges that it has thoroughly examined the Leased Land, and that it accepts the same in their present condition and waives all claims of any nature that may arise therefrom, except that Lessee does not waive any claim it may have against Lessor for * indemnity, contribution, or otherwise relating to the presence on the Leased Land of hazardous substances, dangerous wastes, contaminants, or pollutants (as defined by any relevant law) other than those released onto the Leased Land by Lessee. The Lessee covenants and agrees that the Leased Land shall be occupied and used in an orderly, fit and sanitary condition and that the Leased Land shall be left in the same condition at the expiration or earlier termination of this Lease.

11. Surrender of Premises. Lessee agrees that at the expiration or earlier termination of this Lease, it will quit and surrender the Leased Land without notice and will deliver the Leased Land to the Lessor free and clear of all liens and encumbrances of any kind or nature, except those that may be authorized by this Lease or approved in writing by Lessor. Any personal property upon the Leased Land at the expiration or earlier termination of this Lease may be removed by the Lessor and the Lessor may place the same in storage at a public warehouse at the expense and risk of the owners thereof, but the Lessor shall have no obligation to do so, or at the option of Lessor such property shall be deemed abandoned by the Lessee. Notwithstanding the foregoing, at the expiration or earlier termination of the Lease, at Lessor's option Lessee may be required to remove at its expense all personal property then on the Leased Land. Lessor shall have the right during the last year of the term hereof, including the extended term, if any, to place a "for rent" or "for sale" sign on the Leased Land, and to

have reasonable access to the Leased Land for the purpose of marketing the same.

12. No Liens or Encumbrances. Lessee agrees not to permit any lien or encumbrance from any source or for any purpose whatsoever to remain against Lessor's interest in said Leased Land for more than one week's duration during the term of this Lease, unless Lessee furnishes the Lessor with an indemnity bond from a company authorized to issue such bonds in the State of Washington, indemnifying the Lessor against any liability, loss, damage, cost or expense in the full amount of any such lien plus reasonable attorneys' fees.

13. Insolvency. In the event that Lessee becomes insolvent, voluntarily or involuntarily bankrupt, or if a receiver, assignee or other liquidating officer is appointed for the business of the Lessee, and such receiver, assignee or other liquidating officer is not discharged within one hundred twenty (120) days from the date of his appointment, then the Lessor may terminate this Lease at its option.

14. Hold Harmless Clause and Liability Insurance.

14.1 Indemnity. Lessee shall indemnify and hold Lessor harmless from and against any and all claims of liability for any injury or damage to any person or property arising from Lessee's use of the Leased Land or from the conduct of Lessee's business, or from any activity, work, or thing done, permitted or suffered by Lessee in or about the Leased Land except claims and liabilities occasioned in whole or in part by the negligent acts or omissions of Lessor, its agents, or employees.

Such indemnity shall include all reasonable costs, attorney's fees, and expenses incurred in the defense of any such claim or any action or proceeding brought thereon. This indemnity will be applicable to a claim only if the Lessor:

- (a) notifies Lessee of the claim or liability in writing within sixty (60) days after the Lessor receives notice of the claim or liability;
- (b) permits Lessee to defend or settle against the claim or liability; and
- (c) cooperates with Lessee in any defense of settlement against the claim or liability.

14.2 Lessee's Insurance. Lessee, at Lessee's own cost and expense, will provide and keep in full force and effect during the term of this Lease, public liability insurance with limits of not less than One Million Dollars (\$1,000,000) covering injuries to persons, including death, and loss of or

damage to real and personal property. Such insurance may be provided under Lessee's blanket comprehensive liability insurance policy. During the term of this Lease, Lessor shall be named as an additional insured under such insurance to the extent of Lessee's undertaking set forth in Clause 1, entitled "Indemnity". A certificate evidencing such insurance coverage shall be delivered to Lessor not less than fifteen (15) days prior to the commencement of the Term hereof or the date when Lessee shall enter into possession, whichever occurs later. Such certificate of insurance will provide for fifteen (15) days' advance notice in the event of cancellation.

14.3 Mutual Waiver of Subrogation. Each of Lessor and Lessee shall cause its insurance carriers to waive all rights of subrogation against the other party hereto to the extent of Lessor's or Lessee's undertaking set forth in Clause 14.1 entitled "Indemnity".

15. Eminent Domain.

15.1 Lessor's Indemnification. Lessor shall indemnify and hold harmless Lessee from and against all losses suffered by Lessee upon the taking of the Leased Premises (or any portion of them) by eminent domain or by the transfer of the Leased Premises (or any portion of them) to a condemnor under threat of eminent domain. Such losses shall include, without limitation, the cost of relocating and/or rebuilding any facilities constructed by or for the Lessee on any portion of the Leased Premises so taken or so transferred and the cost of relocating and/or rebuilding any facilities constructed by or for the Lessee which are rendered unsuitable for Lessee's intended use of the Leased Land as a result of such taking or such threat of taking.

15.2 Termination of Lease as to Portion Taken. If, during the term of this Lease, a portion of the Leased Land shall be taken from the Lessor as the result of the exercise of the power of eminent domain, or pursuant to negotiation under the threat of the power of eminent domain, this Lease shall thereupon terminate as to such portion so taken, and shall remain in full force and effect as to the remaining portion, and the amount of the rental to become payable thereunder on or after the date title is vested in or possession taken by the condemnor, whichever first occurs, pursuant to the eminent domain proceedings, shall be reduced in the ratio that the portion taken of the square foot area of the land described in paragraph 1 hereof bears to the entire square foot area of said land described in paragraph 1 hereof.

15.3 Taking. In the event of an eminent domain taking, the parties agree that Lessor shall be entitled to all condemnation awards granted for the taking of the land as though

unimproved and unencumbered, and that Lessee shall be entitled to receive any sums awarded as compensation for improvements on the premises, and shall be entitled to compensation as provided in paragraph 15.1.

15.4 Apportionment of Rent. In the event of a partial taking, current rent shall be apportioned as of the date title is vested in or possession taken by the condemnor, whichever is the first to occur.

16. Default. If at any time during the term of this Lease the Lessee shall fail to pay the rentals provided for herein or if the Lessee shall fail to comply with any of the other terms and conditions of this Lease, the Lessor may give written notice to the Lessee to pay such rentals or otherwise comply with the terms and provisions of this Lease, as the case may be. If such default is not cured within ninety (90) days as to a default in the payment of rent or within forty-five (45) days as to any other default after such notice, the Lessor shall have, in addition to such remedies as may be afforded by the laws of the State of Washington, the power and right to declare this Lease terminated and re-enter the Leased Land, but notwithstanding such remedies or termination and reentry by the Lessor the liability of the Lessee for the rent provided for herein shall continue, and in discharge of such liability, the Lessee covenants and agrees to make good to the Lessor any deficiency arising from the reentry and reletting of the Leased Land at a lesser rental than herein reserved, and to pay such deficiency each month as the amount thereof is ascertained by the Lessor.

Notwithstanding the foregoing, if the matter that is the subject of the notice of default is of such a nature that it cannot be reasonably corrected within forty-five (45) days, no default shall be deemed to have occurred if Lessee promptly, upon the receipt of notice, commences the curing of the default and diligently prosecutes the same to completion.

17. Lessor May Perform. If the Lessee fails to do any act or thing required to be done by the Lessee under this Lease, except to pay rent, the Lessor shall have the right, at its sole option, but not the obligation, to do such act or thing on behalf of the Lessee and upon notification of the Lessor's expenditure in connection therewith, the Lessee shall immediately repay the Lessor the amount thereof plus interest at three (3) percentage points above the most favorable then prevailing interest rate which Seattle First National Bank charges its commercial borrowers for short term loans, but not in excess of the maximum legal rate per annum, from the date of the Lessor's expenditure to the date of the Lessee's repayment.

18. Attorneys' Fees. If, by reason of any default on the part of the Lessee or the Lessor in the performance of any of the terms or provisions of this Lease, it becomes reasonable for the Lessor or the Lessee to employ an attorney, the defaulting party agrees to pay all costs, expenses and attorneys' fees reasonably expended or incurred by the non-defaulting party in connection therewith.

19. Non-Waiver. The failure of the Lessor to insist upon strict performance of any of the terms and provisions of this Lease shall not be construed as a waiver or relinquishment of any such terms or conditions, or of any other term or condition, but the same shall be and remain in full force and effect. The receipt of rent, with or without knowledge of any breach of this Lease, shall not be deemed to be a waiver as to any breach of any term or provision contained herein, and the receipt of rent after any breach of this Lease shall be construed to be a payment for the use and occupancy of the Leased Land and no waiver shall be claimed as to any term or provision of this Lease unless the same be in writing signed by the Lessor.

20. Notices. Any notice, consent, request or other communication provided for in this Lease shall be in writing. Such notice, consent, request or other communication shall be sent by registered or certified mail to the Lessor by mailing the same to Lessor at:

c/o Property Management Section
Seattle City Light
1015 Third Avenue, Room 615
Seattle, Washington 98104

Such notice, consent, request or other communication shall be sent by registered or certified mail to the Lessee, by mailing the same to Lessee at:

The Boeing Company
P.O. Box 3707
Seattle, Washington 98144

Attention: Vice President - Facilities
Mail Stop 13-03

The party to receive the notice, consent, request, or other communication may hereafter designate another address to the other party, in which case the notice, consent, request or other communication shall be sent to that other address. Alternatively, such notice, consent, request or other communication may be personally delivered to the party to receive the same.

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21. Remaining in Possession. If the Lessee remains in possession of the Leased Land after the expiration or sooner termination of this Lease, the Lessee shall be deemed to be occupying the Leased Land as a tenant from month to month, subject to all the provisions of this Lease insofar as they are applicable to a tenancy from month to month.

22. Leasehold Encumbrances.

22.1 Right to Assign Lease for Purposes of Security. On one or more occasions, without Lessor's prior consent, Lessee shall have the right to assign its interest in this Lease to one or more lending institutions ("Lessee's Lender") as security for a loan to provide the construction, original permanent financing, or refinancing of the improvements to be constructed on the premises, or on adjacent property owned by Lessee. If required by Lessee's Lender, Lessor agrees to consent to the assignment of Lessee's interest in this Lease to Lessee's Lender and to execute all documents reasonably required by the Lender to evidence said consent.

22.2 Notice of Default. If Lessee shall, on one or more occasions, assign its interest in this Lease to a Lender, and if Lessee's Lender shall provide Lessor with notice of such assignment and the name and address of the Lender, Lessor agrees that, following receipt of such notice by Lessor, Lessor shall give to Lessee's Lender a copy of each notice of default by Lessee at the same time and whenever such notice of default shall thereafter be given by Lessor to Lessee, addressed to Lessee's Lender at the address last furnished to Lessor. No notice of default by Lessor shall be deemed to have been given to Lessee unless and until a copy thereof shall have been so given to Lessee's Lender. Lessee's Lender shall then have a period of thirty (30) days more, after receipt of the notice, for remedying the default or causing it to be remedied than is given Lessee after receipt of such notice by it. In case Lessee shall be in default, Lessee's Lender shall have the right to remedy the default or cause it to be remedied within the periods and otherwise as provided in paragraph 16 and this paragraph, with the additional thirty (30) day period provided above for curing the default. Lessor will accept performance by Lessee's Lender for any covenant, condition, or agreement to be performed under this Lease by Lessee with the same force and effect as though performed by Lessee. From and after receiving Lessee's Lender's notice, Lessor and Lessee will not cancel, surrender, modify or amend this Lease in any respect without the prior written consent of Lessee's Lender.

22.3 Lessor's Cooperation with Lender. Lessor agrees to cooperate with the reasonable requirements of Lessee's Lender, and to sign any additional documents, including an amendment to this Lease, which are reasonably required to

effectuate the loan, provided that doing so does not have an adverse effect on Lessor's interests and/or rights as set forth in this Lease and in no event shall Lessor extend credit.

22.4 No Encumbrance or Easements by Lessor. Lessor agrees that it will not, without the prior written consent of Lessee, which Lessee may withhold in its sole discretion, grant to any third party a mortgage, deed of trust, or other lien or encumbrance and will not grant any party an easement, license, right of way, or other interest in, to, or over the Leased Land. Without limiting the generality of the foregoing, Lessor specifically will not grant to the Seattle Parks Department or to the general public any right of way over the Leased Land for a bicycle, walking, or jogging path or the like, without Lessee's prior written consent, which Lessee may withhold in its sole discretion.

23. Assignment or Subletting. Other than as described in paragraph 22, Lessee agrees that it will not assign this Lease or any part thereof, without the prior written consent of Lessor, which Lessor shall not unreasonably withhold, provided however that such consent will not be required if (a) the Lease is assigned to the Purchaser of Lessee's adjacent property or (b) the Lease is assigned to a wholly owned subsidiary or any affiliate of Lessee provided that Lessee agrees to remain liable to perform the obligations of the Lessee under this Lease.

24. First Right of Refusal.

24.1 To Purchase. Lessee shall have the right to purchase the Leased Land at any time during the term of the Lease (as it may be extended) when Lessor offers to sell the Leased Land (or any portion of it) to a third party. If Lessor is prepared to sell the Leased Land (or any portion of it) to such third party, Lessor shall first notify Lessee and shall not allow itself to become obliged to sell such land to such third party for a period of thirty days after Lessee's receipt of such notice. If within such thirty day period Lessee notifies Lessor that Lessee intends to purchase the Leased Land (or such portion), Lessor shall sell such land to Lessee for a price equal to the fair market value of such land (and if Lessee fails to give any notice during such thirty day period, Lessor shall be free to sell such land to such third party, provided that if such transaction is not consummated, or if it relates to a portion of the Leased Land only, Lessee's rights shall survive as to all or any portion of the Leased Land not sold to such third party on such occasion). The fair market value shall be determined initially by an MAI appraiser appointed by Lessee. If the Lessor accepts the appraisal of such appraiser, such amount shall be the selling price of the land. If Lessor does not accept the appraisal of such appraiser, Lessor shall so notify Lessee within five days of receipt of the first

appraiser's report and shall within such five day period appoint a second appraiser. If the price determined by such second appraiser and the price determined by the first appraiser are each less than five percent above or below the other, the fair market value of such land shall be the average of such two appraisals. If either of such appraisals is more than five percent above or below the other, the two appraisers shall jointly appoint a third appraiser (and if they fail to do so within thirty days of the second appraiser's report, the parties shall apply to the Seattle Regional Director of the American Arbitration Association to appoint a third appraiser). The appraisal of the third appraiser shall be binding on both Lessor and Lessee and shall be deemed the fair market value of such land. Each party shall bear the cost of the appraiser appointed by such party and one half of the cost of the third appraiser, if required.

24.2 To Lease. At the termination of this Lease, Lessee shall have a first right of refusal to lease the Leased Land. If during the term of the Lease, or any extended term, the Lessor receives a bona fide offer to lease the Leased Land, or any part thereof, which it desires to accept effective at the termination of this Lease, it shall first give Lessee written notice of such offer, and Lessee shall have thirty (30) days thereafter in which to notify Lessor of Lessee's decision to lease on those same terms. If Lessee does not notify Lessor of Lessee's decision to purchase or lease, then Lessor shall be free to sell or lease to such third party.

25. Estoppel Certificates. Both Lessor and Lessee agree at any time and from time to time upon not less than ten (10) days' prior written notice by the other party, to execute, acknowledge and deliver to the other party a statement in writing certifying that this Lease is unmodified and in full force and effect (or if there have been modifications that the Lease is in full force and effect as modified and stating the modifications), and the dates to which the rent and other charges have been paid in advance, if any, it being intended that any such statement delivered pursuant to this paragraph may be relied upon by prospective purchasers or lenders.

26. Binding Effect. The covenants and agreements of this Lease shall be binding upon and inure to the benefit of the Lessor and the Lessee and their heirs, executors, administrators, successors and assigns.

27. Recording Memorandum of Lease. The parties agree to execute and record a Memorandum of this Lease in form and substance as required by a title insurance company insuring Lessee's leasehold estate or the interest of any leasehold mortgagee or fee mortgagee, and sufficient to give constructive notice of the Lease to subsequent purchasers and mortgagees.

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28. Time. Time is of the essence of this Lease.

29. Agents and Brokers. During the negotiation of this transaction and at the signing of this Agreement, Cushman & Wakefield of Washington, Inc. (the "Agent") represented solely the Lessee. Each party signing this document confirms that prior oral and/or written disclosure of agency was provided to it in this transaction. Lessee shall be responsible to pay the commission due to the Agent. Each party represents to the other that it has engaged no other broker in connection with the negotiation leading to this Agreement and shall hold the other harmless from any claim or demand from any other agent or broker claiming to have been retained or to have provided services to such party in connection with this Agreement or the lease of the Leased Land.

IN WITNESS WHEREOF, pursuant to the provisions of Ordinance _____ of the City of Seattle, the parties hereto have executed this Lease thereunto duly authorized the day and year first above written.

a _____ Corporation

By: _____
Title: _____

By: _____
Title: _____

CITY OF SEATTLE

By: _____
Title: _____

(FOR LESSEE ACKNOWLEDGMENT)

State of Washington)
) ss.
County of King)

On this _____ day of _____, 19__ before me personally appeared _____, to me known to be the _____ of THE BOEING COMPANY, a Delaware corporation, the corporation that executed the within and foregoing instrument, and each acknowledged that said instrument was the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and each on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____

State of Washington)
) ss.
County of King)

I certify that I know or have satisfactory evidence that RANDALL W. HARDY signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as Superintendent of City Light of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____

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EXHIBIT A

20.44.040 Lease and concession contracts.

A. All contracts of the City for leases and concessions shall contain the following provisions:

"The lessee (contractor) agrees to comply with all state and local laws prohibiting discrimination with regard to creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap."

B. All contracts of the City for leases and concessions of seven (7) consecutive days' duration or longer and involving employers with three (3) or more employees shall contain the following provisions:

"During the performance of this contract, the lessee (contractor) agrees as follows:

"The lessee (contractor) will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The lessee (contractor) will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, national origin or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The lessee (contractor) agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The lessee (contractor) will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these provisions; provided, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"Lessee (contractor) will, upon the request of the Director (as used herein Director means the Director of the Human Rights Department, or his/her designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the lessee (contractor) in implementing the terms of this provision, and will permit access to his records

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of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purpose of investigation to determine compliance with these provisions.

"If, upon investigation, the Director determines that there is probable cause to believe that the lessee (contractor) has failed to comply with any of the terms of these provisions, the lessee (contractor) shall be so notified in writing. The contracting authority shall give the lessee (contractor) an opportunity to be heard, after ten (10) days' notice. If the contracting authority concurs in the findings of the Director, it may suspend or terminate this lease (contract) and evict lessee (terminate the contract) in accordance with law.

"Failure to comply with any of the terms of these provisions shall be material breach of this lease (contract).

"The foregoing provisions will be inserted in all subleases (subcontracts) entered into under this lease (contract)."

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is executed this _____ day of _____, 1990 by and between CITY OF SEATTLE, a municipal corporation, hereinafter referred to as "Lessor," and THE BOEING COMPANY, a Delaware Corporation, hereinafter referred to as "Lessee."

Recitals

A. Lessor and Lessee have entered into a Lease Agreement dated _____, 1990, wherein Lessor has leased to Lessee that certain real property located in King County, Washington, and legally described as follows:

LEGAL DESCRIPTION

B. Lessor and Lessee desire to execute this memorandum of Lease in order to provide a document for recording purposes evidencing the Lease Agreement between Lessor and Lessee.

Now, therefore, Lessor and Lessee state and acknowledge as follows:

1. Lease. Lessor has leased to Lessee, pursuant to that certain Lease dated _____, 1990, that certain real property located in King County, Washington, and legally described as:

LEGAL DESCRIPTION

This Memorandum of Lease is prepared to evidence the existence of said Lease, but it is not intended as a modification of the Lease; the Lease remains in full force and effect. This document is prepared only to identify and acknowledge the existence and term of the Lease and to identify the real property involved, and is not to be construed as the lease between Lessor and Lessee nor as a summary of all of the terms and conditions of the Lease.

2. Lease Term. The term of this Lease shall commence on the _____, 19____, and unless sooner terminated or cancelled pursuant to the provisions of the Lease, terminates on _____, unless the option to extend granted in the Lease is exercised, in which event the Lease shall terminate on _____, unless a further option to extend granted in the Lease is _____.

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- exercised, in which event the Lease shall terminate on _____.

3. Right of First Refusal. The Lessee is granted a right of first refusal to purchase or to lease the Leased Land.

CITY OF SEATTLE

RANDALL W. HARDY,
Superintendent

THE BOEING COMPANY

By: _____
Title: _____

By: _____
Title: _____

State of Washington)
) ss.
County of King)

I certify that I know or have satisfactory evidence that RANDALL W. HARDY signed this instrument, on oath stated that he was authorized to execute this instrument and acknowledged it as Superintendent of City Light of The City of Seattle to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Date: _____

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____

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(FOR CORPORATE ACKNOWLEDGMENT)

State of Washington)
) ss.
County of King)

On this _____ day of _____, 19__ before me personally appeared _____, to me known to be the _____ of THE BOEING COMPANY, a Delaware corporation, the corporation that executed the within and foregoing instrument, and each acknowledged that said instrument was the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and each on oath stated that they were authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Notary Public in and for the State of
Washington, residing at _____
My Commission Expires: _____